IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/09/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.8876 OF 1997

V.Devendran .. Petitioner

-Vs-

General Superintendent,
I/C. TANSI Structural &
Galvanizing Works,
Mettur Dam. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus as stated therein.

For petitioner : Mr.J.Narayanamurthy

For respondents : Mr.S.Sathiamurthi.

:O R D E R
The above Writ Petition has been filed by the petitioner praying to issue a Writ of Mandamus directing the respondent to make the petitioner permanent as per Section 3 of the Tamil Nadu Conferment of Permanent Status to Workmen Act, 1981 with effects from 18.2.1982 and fix the petitioner's pay in the regular scale with all attendant benefits.

2. In the affidavit filed in support of the above Writ Petition, petitioner would submit that on 18.2.1980 he joined the respondent's organisation as Part time Sweeper on a salary of Rs.75/-; that on representations made by the petitioner to the management, the General Superintendent by his letter dated 31.10.1988 recommended to the Chairman to make him permanent fixing the scale of pay of Rs.450-10-570-15-72 0; that he has completed 480 days of continuous work in a period of 2 4 calendar months as on 19.2.1982; that as per Section 3 of the Tamil Nadu Conferment of Permanent Status to Workmen Act, 1981, he shall be deemed to be a permanent workman from 19.2.1982. On such averments, the petitioner would pray for the relief extracted supra.

3. In the counter filed by the respondent, besides generally denying the allegations in the affidavit filed in support of the above writ petition, he would further submit that the respondent concern is in the verge of closure; that the management is looking out for retrenching even the permanent employees due to the poor financial conditions; that therefore, there is no

scope for making the petitioner as a permanent worker, even assuming that the petitioner has got grounds for making him permanent; that the petitioner has got remedies under the Tamil Nadu (Conferment of permanent status to workmen) Act 1981; that the petitioner without making application before the appropriate authority provided under the said Act has filed the above writ petition as a short-cut method, which is not permissible in law; that the appropriate authority after taking into consideration, the availability of the post and the capacity of the management depending upon the facts and circumstances, will decide whether the petitioner should be made permanent or not and hence, the writ petition is not maintainable.

4. The respondent would further submit that the petitioner was only a part time sweeper under the respondent till 1993; that this unit is one among the several units under the control of the head office of TANSI which alone has the power and authority to make the petitioner as a permanent employee;

that however, the Managing Director who is the overall incharge and head of the TANSI has not been made a party to the above Writ Petition. On such averments, he would pray for dismissal of the above Writ Petition.

5. Heard the learned counsel for the petitioner and the respondent as well and the materials placesd on record have also been perused.

6. During arguments, the learned counsel for the petitioner would submit that in a similar set of facts in this Court by order dated 25.4 .1991 made in W.P.No.9289 of 1986 it has directed the Tamil Nadu Electricity Board, the respondent therein to make permanent a part time Sweeper; which has been reported in 1992 II LLNJ 197(K.Duraisamy v. Tamil Nadu Electricity Board and Others) wherein it has been held:
"Sec.2(4) of the Act defines a workman. The definition does not make any distinction between a full-time and a part-time workman, provided they fulfil the conditions prescribed in Sec.3. It is needless to say that Sweeper does not require any special skill or educational qualifications. When the petitioner has put in 480 days of continuous uninterrupted service in a period of 24 calendar months in the establishment of the respondents, as a part-time Sweeper, the petitioner is entitled to conferment of permanent status as contemplated in Sec.3."

Citing the above decision of this Court, the learned counsel for the petitioner would further submit that on appeal by the respondent therein, against the said decision it was also dismissed by the Division Bench of this Court. On such arguments, the learned counsel for the petitioner would pray for the relief extracted supra.

7. On the contrary, the learned counsel for the respondent besides reiterating the averments in the counter would cite two decisions of this Court reported in (i) 2000-II-LLJ 326 (Tamil Nadu Civil Supplies Corporation Employees Union and Others v. Tamil Nadu Civil Supplies Corporation Ltd., and Another) (ii) 2004-I LLJ 781(Management of Indo Shell Mould Ltd., Plant-II, Coimbatore v. Deputy Chief Inspector of Factories, Coimbatore and Others)
In the first decision cited above, it has been held:

"In the absence of any post either under the statutory rule or by way of administrative instruction, the Court cannot issue positive direction to the respondents for regularising the services of the petitioners. "

In the second decision cited above, it has been held:
"The present day practice of compelling lower quasi-judicial authorities to expedite hearing and disposal of applications through orders in writ petitions reached such a stage in this case that the authority was caught in a tight corner, so to say, driving the present petitioner-management to seek in this petition a direction to the authority to dispose of its application first, that is, before considering the application of the respondent-workmen. And the High Court did issue the said direction sought. It was all a bout conferment of permanent status to the workmen, under Rule 6(4) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981 . The petitioner-management contended there was no question of conferring such status, as the workman's services stood terminated. And it sought the direction aforesaid and the High Court issued it, observing that the direction earlier issued in a writ petition filed by the workmen could not come in the way of the first respondentauthority taking up first the application of the management (Petitioner) in which it disputed the very maintainability of the workmen's application."

Citing the above decisions, the learned counsel for the respondent would pray for dismissal of the above writ petition.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both this Court is able to assess that the petitioner has completed 480 days of continuous service within in a period of 24 calendar months as on 19.2.1982

and as per Section 3 of the Tamil Nadu Conferment of Permanent Status to Workmen Act, 1981, he shall be deemed to be a permanent workman from 19.2.1982.

9. Further, this Court is able to assess from the decision cited on the part of the learned counsel for the petitioner that this Court in a case of similar set of facts has decided that there is no distinction between a full-time and a part-time workman, provided they fulfil the conditions prescribed in Sec.3. and that the Sweeper does not require any special skill or educational qualification and if he has put in 480 days of continuous uninterrupted service in a period of 24 calendar months in the establishment of the respondents, as a parttime Sweeper, the petitioner is entitled to conferment of permanent status as contemplated in Sec.3. The decision cited above squarely applies to the present case. It is also noticed that the appeal preferred against the said decision is said to be dismissed by the Division Bench of this Court. On

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the other hand, the decisions cited by the learned counsel for the respondent has no relevance to the facts of the present case.

10. In the above circumstances, this Court is of the view that the petitioner is entitled to the relief sought for in the above writ petition and hence the following order:
In result,
(i) the above writ petition succeeds and the same is allowed;
(ii) the respondent is directed to make the petitioner permanent as per Section 3 of the Tamil Nadu Conferment of Permanent Status to Workmen Act, 1981 with effect from 18.2.1982 and fix the petitioner's pay in the regular scale with all attendant benefits.
(ii) however, in the circumstances of the case, there will be no order as to costs.

Index:Yes
Internet:Yes

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To
General Superintendent,I/C. Tansi Structural & Galvanizing Works, Mettur Dam.